

Securities and Exchange Commission

§ 240.14f-1

(2) Paragraph (a)(1) of this section is applicable to a roll-up transaction as defined in Item 901(c) of Regulation S-K (§229.901(c) of this chapter), structured as a tender offer, except for a transaction involving only:

(i) Finite-life entities that are not limited partnerships;

(ii) Partnerships whose investors will receive new securities or securities in another entity that are not reported under a transaction reporting plan declared effective before December 17, 1993 by the Commission under section 11A of the Act (15 U.S.C. 78k-1); or

(iii) Partnerships whose investors' securities are reported under a transaction reporting plan declared effective before December 17, 1993 by the Commission under section 11A of the Act (15 U.S.C. 78k-1).

(b)(1) It shall be unlawful for any finite-life entity that is the subject of a roll-up transaction as provided in paragraph (b)(2) of this section to fail to provide a security holder list or mail communications related to a tender offer that is in furtherance of the roll-up transaction, at the option of a requesting security holder, pursuant to the procedures set forth in §240.14a-7.

(2) Paragraph (b)(1) of this section is applicable to a roll-up transaction as defined in Item 901(c) of Regulation S-K (§229.901(c) of this chapter), structured as a tender offer, that involves:

(i) An entity with securities registered pursuant to section 12 of the Act (15 U.S.C. 78l); or

(ii) A limited partnership, unless the transaction involves only:

(A) Partnerships whose investors will receive new securities or securities in another entity that are not reported under a transaction reporting plan declared effective before December 17, 1993 by the Commission under section 11A of the Act (15 U.S.C. 78k-1); or

(B) Partnerships whose investors' securities are reported under a transaction reporting plan declared effective before December 17, 1993 by the Commission under section 11A of the Act (15 U.S.C. 78k-1).

[59 FR 63685, Dec. 8, 1994]

§ 240.14e-8 Prohibited conduct in connection with pre-commencement communications.

It is a fraudulent, deceptive or manipulative act or practice within the meaning of section 14(e) of the Act (15 U.S.C. 78n) for any person to publicly announce that the person (or a party on whose behalf the person is acting) plans to make a tender offer that has not yet been commenced, if the person:

(a) Is making the announcement of a potential tender offer without the intention to commence the offer within a reasonable time and complete the offer;

(b) Intends, directly or indirectly, for the announcement to manipulate the market price of the stock of the bidder or subject company; or

(c) Does not have the reasonable belief that the person will have the means to purchase securities to complete the offer.

[64 FR 61466, Nov. 10, 1999]

§ 240.14f-1 Change in majority of directors.

If, pursuant to any arrangement or understanding with the person or persons acquiring securities in a transaction subject to section 13(d) or 14(d) of the Act, any persons are to be elected or designated as directors of the issuer, otherwise than at a meeting of security holders, and the persons so elected or designated will constitute a majority of the directors of the issuer, then, not less than 10 days prior to the date any such person take office as a director, or such shorter period prior to that date as the Commission may authorize upon a showing of good cause therefor, the issuer shall file with the Commission and transmit to all holders of record of securities of the issuer who would be entitled to vote at a meeting for election of directors, information substantially equivalent to the information which would be required by Items 6 (a), (d) and (e), 7 and 8 of Schedule 14A of Regulation 14A (§240.14a-101 of this chapter) to be transmitted if such person or persons were nominees for election as directors at a meeting of such security holders.

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Eight copies of such information shall be filed with the Commission.

[33 FR 11017, Aug. 2, 1968, as amended at 34 FR 6101, Apr. 4, 1969; 51 FR 42072, Nov. 20, 1986]

EXEMPTION OF CERTAIN OTC DERIVATIVES DEALERS

§ 240.15a-1 Securities activities of OTC derivatives dealers.

PRELIMINARY NOTE: OTC derivatives dealers are a special class of broker-dealers that are exempt from certain broker-dealer requirements, including membership in a self-regulatory organization (§ 240.15b9-2), regular broker-dealer margin rules (§ 240.36a1-1), and application of the Securities Investor Protection Act of 1970 (§ 240.36a1-2). OTC derivative dealers are subject to special requirements, including limitations on the scope of their securities activities (§ 240.15a-1), specified internal risk management control systems (§ 240.15c3-4), recordkeeping obligations (§ 240.17a-3(a)(10)), and reporting responsibilities (§ 240.17a-12). They are also subject to alternative net capital treatment (§ 240.15c3-1(a)(5)). This rule 15a-1 uses a number of defined terms in setting forth the securities activities in which an OTC derivatives dealer may engage: “OTC derivatives dealer,” “eligible OTC derivative instrument,” “cash management securities activities,” and “ancillary portfolio management securities activities.” These terms are defined under Rules 3b-12 through 3b-15 (§ 240.3b-12 through § 240.3b-15).

(a) The securities activities of an OTC derivatives dealer shall:

(1) Be limited to:

(i) Engaging in dealer activities in eligible OTC derivative instruments that are securities;

(ii) Issuing and reacquiring securities that are issued by the dealer, including warrants on securities, hybrid securities, and structured notes;

(iii) Engaging in cash management securities activities;

(iv) Engaging in ancillary portfolio management securities activities; and

(v) Engaging in such other securities activities that the Commission designates by order pursuant to paragraph (b)(1) of this section; and

(2) Consist primarily of the activities described in paragraphs (a)(1)(i), (a)(1)(ii), and (a)(1)(iii) of this section; and

(3) Not consist of any other securities activities, including engaging in any

transaction in any security that is not an eligible OTC derivative instrument, except as permitted under paragraphs (a)(1)(iii), (a)(1)(iv), and (a)(1)(v) of this section.

(b) The Commission, by order, entered upon its own initiative or after considering an application for exemptive relief, may clarify or expand the scope of eligible OTC derivative instruments and the scope of permissible securities activities of an OTC derivatives dealer. Such orders may:

(1) Identify other permissible securities activities;

(2) Determine that a class of fungible instruments that are standardized as to their material economic terms is within the scope of eligible OTC derivative instrument;

(3) Clarify whether certain contracts, agreements, or transactions are within the scope of eligible OTC derivative instrument; or

(4) Clarify whether certain securities activities are within the scope of ancillary portfolio management securities activities.

(c) To the extent an OTC derivatives dealer engages in any securities transaction pursuant to paragraphs (a)(1)(i) through (a)(1)(v) of this section, such transaction shall be effected through a registered broker or dealer (other than an OTC derivatives dealer) that, in the case of any securities transaction pursuant to paragraphs (a)(1)(i), or (a)(1)(iii) through (a)(1)(v) of this section, is an affiliate of the OTC derivatives dealer, except that this paragraph (c) shall not apply if:

(1) The counterparty to the transaction with the OTC derivatives dealer is acting as principal and is:

(i) A registered broker or dealer;

(ii) A bank acting in a dealer capacity, as permitted by U.S. law;

(iii) A foreign broker or dealer; or

(iv) An affiliate of the OTC derivatives dealer; or

(2) The OTC derivatives dealer is engaging in an ancillary portfolio management securities activity, and the transaction is in a foreign security, and a registered broker or dealer, a bank, or a foreign broker or dealer is acting as agent for the OTC derivatives dealer.